State *v.* Patterson, 52 Kan. 335; Com. *v.* Price, 10 Gray (Mass.) 472, 71 Am. Dec. 668; State *v.* Dawson (Mo., 1894), 27 S. W. Rep. 1104; Olive *v.* State, 11 Neb. 1; State *v.* Hardin, 2 Dev. & B. (N. Car.) 407; State *v.* Kent (N. Dak., 1895), 62 N. W. Rep. 631; Allen *v.* State, 10 Ohio St. 287; Watson *v.* Com., 95 Pa. St. 424; Black *v.* State, 59 Wis. 471.

Though the failure to do so is not error. Woods *v.* Com., 86 Va. 929, 931, 11 S. E. 798; Reg. *v.* Boyes, 1 B. & S. 311, 101 E. C. L. 311; State *v.* Banks, 40 La. Ann. 736; Com. *v.* Holmes, 127 Mass. 424, 34 Am. Rep. 391; Com. *v.* Chase, 147 Mass. 599; Cheatham *v.* State, 67 Miss. 335; Black *v.* State, 59 Wis. 471.

Contracts of Hiring at Will.—In Warden *v.* Hinds, 14 Va. Law Register 284, we reported a decision of the United States Circuit Court of Appeals holding that a contract of indefinite hiring is merely a hiring at will, and it was pointed out in a note that Prof. Minor's contention, that such a hiring is presumed to be for a year, must be unsound. Our views as expressed there have been re-enforced by the well settled case of Brookfield *v.* Drury College (Mo.), 123 S. W. 86, in which it is held that an indefinite hiring at so much per day, or per month, or per year, is a hiring at will, and may be terminated by either party at any time, and no action can be sustained in such case for a wrongful discharge.

Negligence—Public School—Duty to Maintain School Premises—Injury to Pupil Caused by Neglect to Repair.—In Ching *v.* Surrey County Council (1910), 1 K. B. 736, the plaintiff, a pupil at a public elementary school, was injured by his foot being caught in a hole in an asphalt pavement in the school premises, which it was the duty of the defendants, by statute, to keep in repair. The court of Appeal (Lord Halsbury, and Moulton, and Farwell, L. JJ.) held, affirming the judgment of Bucknill, J., that the plaintiff was entitled to recover damages for the injury so occasioned.

The rule prevailing in most of the jurisdictions is that in the absence of statute a school district is not liable to a pupil resulting from a defective condition of the schoolhouse. Lane *v.* District Township Woodberry, 58 Iowa 462, 12 N. W. 478.

This for the reason that school districts are quasi corporations organized solely for public purposes, and the duties of the trustees or boards of education, entrusted with the management and care of the property of such districts, is public and administrative only. School District No. 11 *v.* Williams, 38 Ark. 454; Bank *v.* Brainard School District, 49 Minn. 106, 51 N. W. 814; Ford *v.* School District, 121 Pa. 543, 15 Atl. 812, 1 L. R. A. 607; Hotchkiss *v.* Plunkett, 60 Com. 230, 22 Atl. 535.

And in like manner it is held that a city or town which has as-

sumed the duties of a school district, is not liable for an injury sustained by a scholar, attending the public school, from a defective condition of the property or building. Bigelow *v.* Inhabitants of Randolph, 80 Mass. 541; Hill *v.* City of Boston, 122 Mass. 344, 23 Am. Rep. 332; Sullivan *v.* City of Boston, 126 Mass. 540; Wixon *v.* Newport, 13 R. I. 454, 43 Am. Rep. 35 (pupil burned and scalded by defective heating apparatus in public school).

A board of education is not liable in its corporate capacity for damages for an injury resulting to a pupil while attending a common school, due to its negligence in the discharge of its official duty in the erection and maintenance of a common school building under its charge, in the absence of a statute creating a liability. For the reason that it is but an instrumentality of the state, or in other words is a public agent employed in administering the common school system of the state, and accordingly there is no principle of the common law by which such an action as this can be supported. Finch *v.* Board of Education, 30 Ohio St. 37, 27 Am. Rep. 414.

Nor is a municipal corporation liable for an injury to a pupil caused by the negligence of the board of education in allowing the schoolhouse to become and remain in an unsafe condition. Diehm *v.* Cincinnati, 25 O. St. 305.

But in one case it was stated rather vaguely that a school district is not to be treated as strictly a municipal corporation within the meaning of the rule that a city cannot get rid of its governmental duties by employing an independent contractor. School districts it was said, are corporations of lower grade and less power than the city and have less the characteristics of private corporations and more of a mere agent of the state. Accordingly it was held that a school district employing a contractor to repair and improve a school house, is not liable for the contractor's negligence in an action by an injured pupil against the district. School District *v.* Fuess, 98 Pa. St. 600, 42 Am. Rep. 627.

Neither the school trustees nor the superintendent of school buildings are liable in damages for injuries to a pupil sustained by reason of the defective condition of the school premises, where the repairs were ordered by the school trustees of the ward, who acted gratuitously, and were under the direction of the superintendent of the school building, especially where the defendants are not chargeable with personal negligence, and they have omitted no duty imposed upon them by law. They were acting as public officers, and in respect of the acts of persons necessarily employed by them the doctrine of respondeat superior has no application. Donovan *v.* McAlpin, 85 N. Y. 185, 39 Am. Rep. 649.

When Infant Estopped to Plead Fraud.—Grauman, Marx & Cline